

## **REMARKS / ARGUMENTS**

This is intended as a full and complete response to the Final Office Action dated 01/11/2007, having a shortened statutory period for response set to expire on 4/11/2007. The Applicant submits this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 15-56 are pending in the application. Claims 16-35 and 37-56 remain pending following entry of this response. Claims 16-18, 30, 32, 34-35, 37, 39, 51, 53, and 55-56 have been amended. Claims 15 and 36 have been cancelled. The Applicant submits that the amendments and new claims do not introduce new matter.

### **Interview Summary**

On March 11, 2007, a telephonic interview was held between Gero G. McClellan, attorney for the Applicant, and Examiner Cam N. Nguyen. The parties discussed the cited references including U.S. Publication No. 2004/0204315 to *Krumpelt* ("315 Publication"). Claims 15-18 were discussed. The parties also discussed proposed amendments to claim 15-18. The proposed amendments are reflected in this response.

During the interview, the Applicant argued that the effective filing date of the '315 Publication, with respect to the relevant subject matter, does not predate the Applicant's effective filing date. While no agreement could be reached at the time of the interview, the Examiner agreed to review the applicability of the '315 Publication as a 102(e) reference.

### **Claim Rejections Under 35 U.S.C. § 102**

Claims 15-56 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2004/0204315, (hereinafter "'315 Publication"). The Applicant respectfully responds.

The Applicant has cancelled claims 15 and 36 and has re-written claims 16 and 37 in independent form to incorporate the subject matter of claims 15 and 36,

respectively. The Applicant has further amended claims 16 and 37 to further clarify aspects of the invention. The amendments do not necessitate a further search by the Examiner, as the search already performed should encompass the subject matter of the amended claims. The Applicant respectfully requests the entry of the claim amendments.

In regards to the '315 Publication as a 102(e) reference, the effective filing date of the '315 Publication, with respect to the relevant subject matter, does not predate the Applicant's effective filing date. The '315 Publication is a continuation in part (CIP) of U.S. application number 10/423,461 ('461) which claims priority to U.S. provisional application number 60/376,491 ('491). While the provisional application '491 predates Applicant's priority date, the '491 application does not disclose relevant subject matter later disclosed in the '315 Publication, and relied upon by the Examiner. For example, the Examiner relies on the '315 Publication as disclosing a perovskite wherein B' is selected from the group consisting of Ru and Rh (claim 1). However, the '315 Publication does not have support for this subject matter from the '491 application. The '491 application discloses that in a  $(A_aA'_bO)(A_aA'_bB'_cB'_dO_{3+/-e})_n$  perovskite B is selected from Ni, co, Cu, Zn, Fe, Ga, Al, Cr, Mn, Ti, V, Mo, W, Zr, Nb, and Sn and B' is selected from Mg, Al, Ti, V, Cr, Mn, Fe, Ga, Nb, Mo, W, Zr. The '491 application does not disclose Rh as being one of the metals selected to comprise the perovskite. In other words, the subject matter on which the Examiner relies was added as new matter to the '461 CIP application.

It is well-established that a reference is only effective as of its earliest effective filing date for what it actually discloses. (See, for example, MPEP §201.11(I)(B)) Thus, new matter added to a later-filed application with a priority claim to an earlier application (e.g., a later-filed application claiming priority under §119 or 120), is only effective as prior art as of the later date. *Id.* Accordingly, in this case the matter on which the Examiner relies is only available as prior art as of April 27, 2004. Therefore, the '315 Publication is unavailable as a reference teaching a composition with a perovskite crystallographic structure and rhodium as recited in claims 16, 17, 18, and 37 and claims dependent therefrom.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

### **CONCLUSION**

Accordingly, it is believed that the present application now stands in condition for allowance, and allowance of the claims is respectfully requested. Early notice to this effect is earnestly solicited. If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed below, or Gero McClellan at (336) 643-3065, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Gero G. McClellan, Reg. No. 44,227/

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